From International Land Deals to Local Informal Agreements: Regulations of and Local Reactions to Agricultural Investments in Madagascar

By Burnod Perrine, Gingembre Mathilde, Andrianirina Ratsialonana Rivo, and Ratovoarinony Raphael

Paper presented at the International Conference on

Global Land Grabbing

6-8 April 2011

Organised by the **Land Deals Politics Initiative** (LDPI) in collaboration with the **Journal of Peasant Studies** and hosted by the **Future Agricultures Consortium** at the **Institute of Development Studies**, University of Sussex

From International Land Deals to Local Informal Agreements: Regulations of and Local Reactions to Agricultural Investments in Madagascar

Draft conference paper

6-8 April 2011
Co-organized and hosted by the Future Agricultures Consortium
Institute of Development Studies (IDS), University of Sussex, Brighton, UK

Burnod Perrine, CIRAD Tetis – Observatoire du Foncier à Madagascar
perrine.burnod@cirad.fr

Gingembre Mathilde, Université Sorbonne-Paris1et Université d'Antananarivo Madagascar
mathgingembre@yahoo.fr

Andrianirina Ratsialonana Rivo, Observatoire du Foncier à Madagascar
ratsialonana@observatoire-foncier.mg

Ratovoarinony Raphael, Observatoire du Foncier à Madagascar
raphael.ratovoarinony@observatoire-foncier.mg

Abstract:

In 2009, the 1.3 million hectare agricultural project planned in Madagascar by Daewoo Logistics exemplified the paradoxical position of the Malagasy state; simultaneously encouraging the development of large-scale acquisition and implementing a land reform to secure local land rights**.** Opposition to the project was successful mainly thanks to the efforts of international NGOs and to the rhetorical value of the land issue in national political debate. Despite this well publicised victory against large scale foreign land investment in Madagascar, the trend of large scale land acquisition continues and raises a number of questions of interest to this article. On the ground, what are the dynamics of local politics within the framework of the ongoing farmland acquisition projects? Furthermore, what are the impacts of the recent land reform on investors' land access modalities?

The article attempts to provide a snapshot of the numerous and complicated interactions, and overlapping of land rights which exist in areas targeted by investors. Whereas legal procedures to access land do not guarantee local and legal land rights due to the imperfect implementation of laws, informal land deals seem to take into account a broader spectrum of rights, legitimated on the basis either of local land access practices or of positive law. This paper also shows that for the moment, local protests to important land-related investments are rather limited in Madagascar and analyses the reasons why they are so (most plantations are just starting, available information is scarce, private agribusiness look very much like international development project...).

I. Introduction

In the autumn of 2008, the "Daewoo case", a large-scale land acquisition project in Madagascar, created a media buzz. Various international media, following the Financial Times (Blas 2008), wrote about the negotiation undertaken between the South Korean company, Daewoo Logistics, and the Malagasy government. In addition to implementing roads and new cities, the project planned to produce palm oil and corn on 1,300,00 ha for export to the Korean market.

The first negotiations regarding the leasing of such a large tract of farmland brought into question the coherence of national policies. The opaque promotion of foreign large-scale land acquisitions appeared incompatible with the recent land reform which aimed to secure land access at the local level (Teyssier et al., 2010).

Primarily through the internet and media networks, opposition to this land transfer came initially from the Malagasy diaspora, particularly from the Collective for the Defence of Malagasy Land[1], in connection with various international Non Governmental Organisations (CCFD, Via Campesina, GRAIN, Peuples Solidaires) (Rakotondrainibe et al., 2010). This international opposition initially failed to hit home with the local population until a political crisis erupted in the capital of Madagascar in December 2008 (*op. cit*). The opponents of President Ravalomanana's regime had diverse claims to make but seized the sensitive land issue. They cited the Daewoo case as an example of how President Ravalomanana was stripping the country of its national resources and emphasized how foreign investors like Daewoo could jeopardize local land-based livelihoods by usurping Malagasy ancestral lands (Pelerin, 2009). Using this argument amongst others, they successfully mobilised the masses and toppled the Ravalomanana government in March 2009.

The media buzz on large-scale land acquisitions fuelled the Malagasy political protest and this national opposition, in turn, fuelled the international debates and protests against the so-called "land grabbing" phenomenon. The new president, Rajoelina, was front and centre of opposition to these foreign projects. He announced in his first public speech his opposition to the Daewoo project which ultimately contributed to the projects failure. Thus, the opposition to Daewoo's project was successful mainly thanks to the efforts of the NGOs and to the value of using the land issue in political debate.

Social and political reactions at the national level were strong and succeeded in grinding the Daewoo project to a halt. However, the latter has masked agricultural projects of lesser scope that are still ongoing (Andrianirina Ratsialonana et al. 2011).

Thus the Daewoo case provides a valuable starting point in the analysis of the complexities of large scale land acquisition in Madagascar. The article analyses the dynamics of local politics within the framework of large-scale farmland acquisition projects in Madagascar. It also

---

1 http://terresmalgaches.info/. The Collective launched campaign in January 2009 against "the Daewoo affair".

studies whether the new land reform, based on the recognition of local land rights and the decentralisation of land management, have changed the elected and the sstate representatives' stance and empowered local rights holders. It then seeks to open the first discussions on the impact of the recent land reform on democratic governance.

The article begins by discussing the impact of the Daewoo case and the change of government on the national politics in relation to investment and land issues. Despite publicly opposing foreign investment, the current government has continued its predecessors' policies of supporting international investment in Madagascar. Nevertheless, it has implemented new legislation to regulate large-scale land investments and, above all, to control local informal negotiations. But risks for local groups and investors do not arise out of a lack of legislation or of any conflict of law but rather from the tension between the legislation and its effective enforcement (see also Evers et al., forthcoming).

On the basis of some ongoing cases, the second part presents the complex overlapping of land rights on areas targeted by investors. It analyses how agribusiness projects create land conflicts and reactivate former tensions, being whether or not in relation with land issues. Tensions and conflicts arise not only between developers and the local groups, but also amongst local groups and different state services. When investors start formal procedures to access land, local and legal land rights are partly not respected due to the imperfect implementation of laws. Conflicts erupt in the legal forum but claims draw only from the positive law (domain of *lex fori*) and not from the local practices of land access (*lex loci*). Thus, the formal nature of the land access procedure makes local actors change legal forum, from *lex loci* to l*ex fori*, in order to fight for their rights. When investors negotiate informal land access, the negotiation takes into account a larger range of arguments, legitimated on the basis of local land access practices as positive law.

Thirdly, the article analyses the role that certain mayors play in negotiations with investors. It is argued that some mayors play a pivotal role in welcoming and facilitating private investment projects, as they do or have done in the past with international aid projects. Their privileged stature as brokers (Bierschenk et al 2000) puts them in a position to attract this new "revenue". Since they can sometimes be the sole interlocutor of the project's developer, there is a risk that local populations are not sufficiently consulted and informed.

The last section concludes on the effects of the on-going land reform on the international land deals and on the perspective to strengthen this policy.

Methodology

Data on actors' land strategies were collected through hundred in-depth interviews with agents from public institutions, regional or local governments, private developers, populations, and other key informants. The interviews were conducted by the authors in the capital city, Antananarivo, and in regions favoured by investors in 2010 and 2011.

II. Was the Daewoo case a turning point?

The Ravalomanana government (2002-2009) envisaged international investments as vehicles to fuel the economic development of Madagascar and develop new economic partnerships. Due to an incentive policy and the multiplication of investors looking for natural resources or

market opportunities, foreign direct investment flows increased from 95 million USD in 2005 to 1,445 million USD in 2008 (UNCTAD, FDI database, March 2010). These were mainly directed towards the mining sector and, ito a lesser extent but in an unexpected way, towards the agricultural sector. Focusing on state-owned resources, these flows gave the government the opportunity to control new funding: private investment coming from northern and southern countries (European or North American countries as well as Asian countries).

The new Rajoelina government has maintained the policies of the former government with regards to international investment. Nevertheless, as they themselves attracted criticism from the international community for their unilateral management of the political crisis, the transitional authorities started criticizing exclusive dependency on western investments and looking for other sources of investments. New foreign economic partnerships are therefore still promoted, all the more as international aid has been suspended in the meantime. The government has concluded contracts in the mining sector, discussed opportunities to sell water access and stayed open to agricultural investments. The Daewoo case and the large-scale land acquisition issue were therefore arguably more a case of political rhetoric to destabilise the former President than a definitive opposition to foreign large-scale land investments (Evers et al., forthcoming).

Nevertheless, the Rajoelina government has also implemented new regulation (Circulaire N°2010-321), explicitly advocating land lease[2]. Moreover, approbation is compulsory to start the formal procedure to access land. Each project planning to develop more than 250 hectares has to be evaluated and approved by a commission composed of representatives of each concerned ministries, or, more than 2 500 ha, by the Council of Ministers. On this basis, the government aims to organize the different procedures and to guide the investors who are often lost in front of the proliferation of required documents. It also seeks to obtain and centralize information on the on-going agribusiness projects. Between 2005 and 2010, approximately 50 agribusiness projects were announced or revealed in media and research reports (Andrianirina Ratsialonana et al. 2011). An aggregate total of nearly 3,000,000 ha of land has been affected (65% for food production, 32% for biofuel, 3% for forest plantations)[3] (*op. cit.*). Despite the number and the scope of these projects, the central government had information, sometimes very scarce, on only a third of these projects. Investment projects in the agricultural sector are often negotiated behind closed doors, but only some of them at government level because lots of investors directly address regional or local representatives. Thus, through this new

2

The sale is not even forbidden. The new constitution, proposed by Rajoelina's political party and accepted by referendum in December 2010, is ambivalent on that point. A first draft of the constitution mentioned explicitly, right from the start, that sale and land lease longer than 30 years for foreigners were forbidden. However, the new constitution refers to the existing laws and, thus, to the investment law. The latter includes the right of non-national investors to acquire land. It allows this through the delivery of an acquisition permit (*autorisation d'acquisition)* for all foreign investors possessing a Malagasy company (Law N° 2007-036), which in practice is quite straightforward because the only condition is to have one of the associates registered as a resident. However, the modalities of enforcement of this authorisation are still vague in the absence of the enabling decree (Andrianirina Ratsialonana et al. 2011).

3

This surface area was significant considering that that, on the whole island, only 2,000,000 hectares are cultivated by 2,5 million family farms)(MAEP, 2004). It also represented— although the methodologies and definitions used are open to question—15 to 37% of potentially arable land. These lands are estimated to be about 15 to 20 million ha by FAO (2007), and 8 million ha by the Ministry of Agriculture (2008) (Andrianirina Ratsialonana et al. 2011).

legislation, the government wants to recall to the regional and local leaders and clerks the authority of the central administration. Its objective is to implement a better regulation of the agribusiness projects but also probably to exercise a better control on the associated financial resources.

This new legislation complements existing land laws. The legal procedure to access state-owned land was modified with the launch of the new land policy in 2005. This new land policy aims at the recognition of local land rights and at the decentralisation of land management (Teyssier et al. 2009). Prior to 2005, all land subject to claims of customary ownership and untitled land was deemed to be state-owned. The only way to legally secure land was to obtain a title deed delivered by the state land registry services. Now, untitled but occupied land is no longer the property of the state. Land claimed by local people may be deemed 'untitled private property'. Moreover, local governments (municipalities) have been granted new powers. By creating a local land registry office, they are responsible for recognizing private property rights on the basis of pre-existing customary rights and they can issue individual or collective land certificates. The property is no longer created by the state administration officers but recognised by a local commission[4] on the basis of pre-existing local rights[5]. As a consequence of this new legislation, the state, via the land administration, can only lease or sell the state-owned land, thus it can neither lease nor sell land that includes or encroaches upon titled private property, special status zones (national parks, land reserves) or un-titled private property or occupied land.

Thus, the land laws are in line with FAO, UNCTAD, and the World Bank principles for agricultural investment mentioning the obligation of "respecting land and resource rights". Coupled with environmental law[6], these different legislations aim at securing land rights and the interests of local groups. They also theoretically permit the coherence of policies promoting investment and securing land rights. However, risks for local groups and investors do not arise out of any lack of legislation or out of any conflict of law but rather out of the tensions between the legislation and its effective enforcement (Evers et al., forthcoming).

III. Targeted land: overlapping rights realities

Since 2009, investment flow into Madagascar has substantially decreased. Of the 52 projects announced and listed between 2005 and 2009, one-third of the projects proceeded no further

4 This local commission is comprised of elected representatives of the village and neighbors of the concerned claimant.

5 Users can choose the means of formalizing their land rights: title deeds and certificates confer similar property rights – the second being 30 times less expensive – 15 USD instead of 507 USD, and 12 times quicker to obtain – in average 6 months instead of 6 years (ECR 2008; Teyssier et al. 2009).

6 An environmental law (decree MECIE, 2004), enforced by the National Agency for Environment (Office National pour l'Environnement), specifies that all agricultural projects bigger than 1 000 ha must get an environmental license. This license is delivered only after the validation of an impact assessment including environmental and socio-economic criteria.

than land prospection or were halted (Andrianirina Ratsialonana et al. 2011)[7]. Nevertheless, about 30 projects are still active[8]. The targeted land area currently totals about 150,000 ha, 20 times less than the surface areas contemplated by the 52 projects. Biofuel, for national and international markets, is the main objective (96% of project lands). To our knowledge, only 14 private companies have started their agricultural projects and realized their first plantations (maximum several hundred hectares per project). They are mainly funded by foreign investment (12 out of 14)—for the most part from European origins. They aim to produce sugar cane, cassava or jatropha-based biofuel (11 out of 14). These companies, the majority with little experience in the agricultural sector, plan to develop large-scale plantations to an overall land area of between 5,000 and 30,000 ha, based on mechanisation and a wage system. The investors seek land with common characteristics: good pedoclimatic conditions adapted to the planned crop and mechanisation; from 10,000 to 30,000 ha; 'non- or under-productive', 'un-owned land'—the targeted land is thus supposed to be state-owned; and for the most part, the proximity of a national road or a port for the transportation of inputs. Investors look mainly for *tanety* (flat land) and not for shoal land suitable for rice production. Even if they are qualified as non- or under-valued by investors, *tanety* are likely to be pastures or reserves of wood (firewood being the household's primary source of energy). Moreover, investors look for large single tracts of land so as to facilitate the inclusion of crop plots.

With the exception of one consortium of Malagasy investors planning to buy approximately 20,000 ha, other developers (all foreigners) favour leasing rather than outright ownership. Considering the land as state-owned land, most of them hope to get a 50-year lease (*bail emphytéotique*) from the state and land rents for about 2,000 ariary/ha (i.e. about 0.80 USD/ha).

The targeted land is generally object of different use and property rights on the basis of different legal jurisdictions. Thus, different layers of rights are superimposed on the same land, each land ownership claims drawing their legitimacy from local practices of land access (*lex loci*) or positive law (*lex fori*).

Some investors found themselves competing for land (Andrianirina Ratsialonana et al. 2011). These zones of disputed entitlement proves that the land fitting all the favourable investment criteria is not that extensive, and above all, not as extensive as forecast[9]. Moreover, in the past, these zones could have already been identified as rich in natural resources and favourable for economic development. Different valuations were successively planned even if they never induced any change in the land use. Each of these economic projects induced the formalisation of land rights trough different legal forms (Raison, 1984). Thus, as observed in numerous regions of Madagascar (Rakoto, 1995; Aubert et al., 2008; Teyssier et al., 2009), different layers of land rights result from the history of the zone. Whereas most of the

7 The political crisis discouraged some investors but was not the main cause. As observed in numerous developing countries, many investment projects did not materialise due to the world financial crisis and the stabilisation of food prices (World Bank, 2010).

8 However, the list increases as one goes along the Land Observatory realizes new field studies.

9 Indeed, although the methodologies and definitions used are open to question, potential arable lands are estimated to be about 15 to 20 million ha by FAO (2007), and 8 million ha by the Ministry of Agriculture (2008).

territory is not titled[10], the area targeted by investors fitting all the criteria for favourable investment can happen to be located in quite intensively titled areas of rural Madagascar.

Schematically, three layers co-exist. A first layer is composed of local land rights based on local land access practices and custom (*lex loci*). Those vary from individual property rights (crops, housing) to collective management of use rights (pasture, wood harvesting).

The second one is composed of legal rights proceeding from positive laws. On the targeted area, neighbouring plots can have different legal status: state-owned land including titled private property in the name of the state and land deemed to be "vacant and ownerless", titled private property in the name of private landowners and untitled private property. Indeed, during colonial times, large tracts of land were claimed by French settlers. After Independence in 1960, the zones of colonization were abolished and land ownership reverted to the state (Ratsambarison, 1999). Besides that, the government registered large tracts of land to develop large-scale plantations under public management. In the 1980s and the 1990s, following the international agencies' recommendations to protect biodiversity, large operations were launched to register the land which would become part of the new natural reserves in the name of the state (Maldidier, 1999). The same kind of operations was conducted in the neighbouring areas except that the land was registered in the name of local landowners in an attempt to compensate them and to limit the agricultural frontier[11]. Besides, some landowners – generally local elites or farmers associations - also claimed for and/or acquired a land title. Lastly, due to the new land reform, local rights are now legally recognized except if the concerned plots are already registered and titled. However, most local land rights are not formalised through certificates. Indeed, only one-fifth of the local governments has a local land registry office and among these localities, only some individuals or households have asked for a certificate and, generally to register the housing or the crop plots, but not the pastures (Observatoire du Foncier, 2011).

A third layer is composed of use rights, based on custom and local practices, and secured by legal devices. In the 1990s, following international recommendations, Madagascar implemented a law organising the possibility of transferring local natural resource management from the state to local users organised in associations of users (loi GELOSE 1996). This legislation aimed to improve the management of natural resources, to protect them from a free access system and to strengthen collective management rule (Tsitohae et Montagne, 2005). Each association has to carry out the demarcation of the area of land under its management and to secure its use rights through a contract with the mayor and the Ministry of Forests and Environment. Focusing generally on forest resources, the land was presumed to be state-owned land under the responsibility of the Ministry of Forest.

---

10 A total of 330,000 titles have been delivered over the last century, and only about 1,000 new titles are delivered annually. Only 1/15 of the territory would have been titled (Teyssier et al., 2008).

11 Nevertheless, some of these operations were not finalised up to the identification of the landowners and the land is now Stat-owned land.

In certain areas, these different layers of rights overlap. Despite this legal pluralism, land use is not systematically source of conflicts. Local trade-offs are established and often facilitated by the absence of the legal landowners (state or individuals).

IV.Tensions and conflicts

In contexts where different layers of right overlap, the investors' request to access land is likely to create or to awaken tensions and conflicts, on land as well as on other issues. On the basis of the different case studies, two modalities of land access can be distinguished and restrict the panel of arguments used to negotiate.

Legal procedure, dispute and change of legal forum

To date, few developers have started the legal procedure to formally access land. They generally have when their backers demand it (banks, shareholders). To purchase or rent land, the state land services demand compliance with several steps in order to verify that the targeted land is genuinely unoccupied in its ordinary sense, "vacant and ownerless".

Until October 2010, investors were asked to take the following steps: obtain the mayors mayor's approval; have the relevant tract of land mapped by the land registry service in order to check the absence of titled private property or untitled but occupied property; do a field visit by a recognition commission organized by the state land service to verify the presence of existing claims to land on the targeted area and, in that event, to restrict land available for development to genuinely "vacant and ownerless" tracts; have their file validated by the regional representatives of the concerned ministries and ultimately validated by the Ministry in charge of land issues.

These steps are usually fulfilled but their actual implementation is questionable. On the ground, mayors easily accept the establishment of private agribusiness projects (see *infra*). During the first negotiations that are made between the investors, their team, the mayor and the leaders of the village, investors generally promise to not use the cultivated land and to furnish fodder in compensation of pastures. The investors, the mayor, and often the village leaders themselves usually consider the targeted area as state-owned land. Aware of the different layers of rights it is home to, mayors and most of village leaders believe that local compromises could be reached. Moreover, the projects still being at an initial stage, they are not necessarily conscious of the amount of land that the developer intends to occupy, even when given numbers. Some leaders are aware that their rights to cultivate or to use the pasture will be denied but might think that the decision, viewed as coming from the state and concerning state-owned land, is impossible to circumvent. Moreover, during this first negotiation, the developer and the mayor list the various commitments made by the developer (priority access for locals to jobs, construction of school, well or community clinic, payment of land fees). This list of material advantages constitutes strong incentives to accept the project, even if, as observed in numerous cases (Cotula et al., 2010), the compensation commitments are not legally binding.

The state land services then draw a map of the concerned tract of land. However, the documents used by the state land services are not necessarily up-to-date: they may not show all titled property and do not feature the untitled private property. Even in the regions where state land services have been modernised and archives digitised, the corresponding software is

not systematically used. In these conditions, neither investors nor state agents can have an exhaustive knowledge of all the existing legal rights.

The fieldwork of state land service officers is expected to compensate for the lack of a comprehensive inventory. A commission, which should be composed of a government land service agent, a surveyor, a representative of the local technical services (agricultural, forest and environment, etc.), the mayor, and of the leaders of the village concerned must disclose in a statement the presence of existing claims to lands on the targeted area. However, it often turns out that some of these actors, notably the neighbours of the land targeted for development, the owners of the titled or untitled land or the representative of the technical services, are not represented. Even in cases where the local government had a local land registry office and was signatory of VOI associations, it was found out that neither local officers nor VOI representatives had been invited to attend the commission. In addition, due to the novelty of a procedure on such large areas and insufficient investment put into the spreading of information, the potential landholders of the targeted land are not informed either. Under these conditions, local objections are rare and the statement issued by the commission is often restricted to the sole mention "nothing to declare". As there is no formalised opposition, the targeted land is defined as state-owned land and the state is then allowed to register it in the name of the national investor, or in the state's name to transfer rights of use to the investor.

Thus, the procedure to access land is partially illegal (insufficient information before and after the commission, absence of the agent from the local land office in the commission, ignorance of the official contract linking the Ministry of Forest, the mayor and the VOI, ect). It allows neither the identification nor the respect of land rights, even of those duly recognized by positive laws. As a consequence, both private property rights formalized through a title and local property rights recognized by the new land reform are at risk.

In only one case, have local users associations in charge of resources management (VOI) made one complaint. As the land access procedure was led in reference to the *lex fori* domain, the claimants formulated their claim in the same domain. The objections were addressed to one of the regional state service and legitimated on the basis of positive law. The VOI underlined that that their activities and rights, are formally recognized in a contractsigned by the mayors and the Ministry of Forests and Environment. However, lack of knowledge, of money and of the relevant networks to engage in positive-law legal procedures discourage many local stakeholders from bringing their land claims to state institutions (Pronk & Evers 2007). This was proved again by this very case study: some other farmers explained that the protest was not even conceivable. They assumed that land had already changed hands simply because they had seen the developers, the local representatives and the officers of the state land services in the field and because they had heard that the mayor had put up some official documents. But the VOI associations and their tight connexion to the technical services eased the formalization of their request for a revision of the targeted area. It should be noted that this opposition also generated tensions amongst the different state's technical services.

This case suggests that the conflict will certainly be resolved between the state's technical services and the Ministries, without involving the population. It also emphasizes that tensions are not only between developers and local groups. The investors' requests can awaken tensions between different state services. Land claims are here legitimated on the basis of different legal orders belonging to the same legal jurisdictions (tensions between different positive laws).

Despite its the illegal dimension, the formal land access procedure induces a change in legal forum, from *lex loci* to *lex fori* (Evers et al, forthcoming), and risks denying legal use and property rights.

Informal land access, tensions and negotiation in the local sphere

Most investors opt for the establishment of informal land contracts. They approach the local mayorto present their project and negotiate informal land access with, sometimes, the support of the main representative of the regional government. They plan to engage the legal procedure subsequently. Their priority consists in doing the first plantations not only to do agronomic trials but also to attract new funders (nurseries, trials, "show" plantation). The study cases were conducted in communes without land registry office.

In those cases, the developers have become acquainted with the different land rights. As the project is developing, they face different land ownership claims. Planning to valorize non cultivated land, they generate conflicts with stock breeders or landowners who have not yet cultivated their plot. The informal dimension of the land arrangement allows diverse objections to emerge. Cattle farmers and landowners legitimate their opposition on local land practices or legal devices. The developers generally interact with mayors and leaders of villages and not with the whole population.

According to Borras and Franco (2010), it is at the local level that local elites and bureaucrats who stand to gain in new investments can easily manipulate negotiation processes and where local communities can easily be isolated from their potential national allies (Borras et Franco, 2010). But it is also at the local level that trade-offs can be reached on local practices and positive-law arguments.

Mister R. stated that his 600 ha plot was included in the area targeted by the developers. Although he was not able to show the title deed, Mr R. argued he was the legal owner. The mayor asked him why, as a legal owner, he was not paying his land fees (about 1$ per ha). Unable to pay such an amount of money, Mr R. finally accepted the mayor's offer. He would not perceive any direct compensation in return for the use of his land. But, as the developer would pay the land fees for him, he would be duly recognized as the legal owner and his land rights would be secured thanks to the land fees receipt. This solution induced no extra cost for the developers since those had already accepted to pay the land fees on the whole targeted area.

Some cattle breeders opposed the developers' plantations on the grounds that there were limiting their pastures. Mentioning the continuous tensions opposing cattle owners and farmers due to crops damage, the mayor argued that the plantation extension would benefit not only the investors but all of the neighboring farmers. He finally convinced the stock breeders by offering them to be the first beneficiaries of the new project infrastructure.

Tensions and conflicts arise not only between developers and local groups, but also amongst local groups. There are not only claims on the basis of competing legal jurisdictions, based respectively on local practices of land access (*lex loci*) and positive law (*lex fori*), but also land claims legitimated on the basis of different legal orders drawing on different local practices.

Informal arrangement seems to leave more room for negotiation and compensation for local landholders. Nevertheless, this type of arrangement does not prevent conflict nor opportunistic behavior. In one case, a conflict emerged due to the discontent of one village not to benefit from the job opportunities. In another case, a village leader tried repeatedly to renegotiate the material compensation obtained in exchange of the use of part of the village land.

Occasionally, but not always, the informal arrangement is formalized through a convention approved by the communal local council or, in some rare cases, by the main representative of the region. This oral or written convention is not reviewed by the state land service. Thus, this first agreement is based on the parties' interpretation of positive law and local/customary land rules. It proceeds neither from the *lex fori* nor from the *lex loci*. Moreover, it is not limited to the sole land issue but it includes the different developers' commitments (priority access for locals to jobs, construction of school, well or community clinic, payment of land fees...). However, the local arrangement may prevent the expression of claims or objections during the future legal procedure and formally deny the landholders rights.

Lastly, the local trade-offs could be challenged when the developer carries out investment in the concerned area as this amounts to a locally-valid appropriation strategy. According to local rules prevailing in some of the concerned areas, any land that is cleared or burned can be appropriated (Bidoux et al., 2008). Indeed, in Madagascar, or at least some of its regions, like in Sahel, « rights related to land or natural resources depend on the investment that has been carried out on it. […] Any investment gives permanent rights » (Lavigne et al., 2000). This effective appropriation can induce violent protest. To rephrase Hirschman analyze analytical scheme (1970), if stakeholders cannot not voice their protest in different legal forum and cannot not open a debate (voice option), they can act and burn the plantations down (exit option).

V. Local politics: private projects welcomed in the same way as international aid

Despite the diversity of the institutional trajectories followed by developers to present their project and negotiate land access, all investors address the mayor and see him as the keystone for negotiations. As most ongoing large-scale land investments are still at an initial stage, all developers are currently negotiating land access at the local government level.

As observed in the context of international aid project, « external operators see the local government as a scale well adapted to their projects » (Bidoux et al., 2008 : 34). During the 1990s, due to past international policies promoting the "local level", local governments became a new administrative unit in numerous southern countries. Results of the general paradigm shift towards decentralization and of the lesser confidence in the national government, local governments have gained new administrative powers and become the linchpin of local development. Despite their recent creation[12], the Malagasy local governments represent now an effective administrative unit and became "privileged

12 In Madagascar, local governments were created in 1994 (law n°93-005).

interlocutors of development workers" (Bidoux et al., 2008). Following the same path as international aid projects private investors interact mainly with mayors.

Indeed, local governments have been seen as the most reliable locus of power and the most appropriate scale to curb corruption. Although scholars have largely criticized these postulates (e.g. Blundo et Mongbo, 1988), developers still bring these arguments up. For some, the mayor is outside of politicking and outside of the vicissitudes of national politics. « *I really don't want to have anything to do with politics here. We created that [our project] on our own without any help from the state, except for that of the mayor… I don't want to have connections with government members and to be labeled politically; it's the reason why I have declines all invitations coming from the upper sphere*".

Moreover, private investments develop in a way that makes them look very much alike international aid projects. Thanks to close contacts with various development projects, mayors have learned new skills and developed new expectations. To welcome a project means gaining access to new financial and material resources. Likewise, albeit tacitly, investors who want to settle in a locality must fund the development of the area. Thus, all developers commit themselves to building or improving social infrastructures (schools, hospitals, wells) and to favoring local recruitment. First works to build school and wells, or first gifts (cow sacrifice, building furniture, financial retribution) are usually made even before the agricultural project is properly launched. Sometimes legitimated on the basis of "custom" or anchored in a sort of "corruption-related investment" (Blundo et Olivier de Sardan, 2001), these gifts seek to strengthen the relationship between the investors' team, the mayor and, more largely, the local society.

From the mayors' point of view, welcoming an agribusiness project is similar to welcoming an international aid project. It is a means to compensate for the deficiencies of the welfare state. In a context where state subsidies granted to local government are still low and local taxes are limited, the average annual budget of Malagasy communes is between 5000 and 12,000 USD. The arrival of an investor is therefore seized upon as an opportunity to gain new resources and leverage. «*Why are we giving our land to project C.? The Malagasy state doesn't even look at our village whereas we have lots of concrete advantages thanks to C. It pays the land fees that strongly increase the financial resource of my local government. Several times I asked the Minister: we need schools, we need hospitals. But they haven't done it. But on the contrary, C. did a lot. They built a school, they pay a teacher, and there are already 30 pupils. They also support a local association*». Provided mayors show good bargaining power, investment projects can have major impacts on a locality, even before it creates all the promised jobs. Thanks to the land fees one project has already paid, the concerned local government has more than doubled its budget.

Similarities between private agribusiness undertakings and development projects have been simultaneously fostered and fueled by the circulation of actors between the development and private investments spheres. Several case studies reveal that brokers of the land-related investments had strong work experience with international donors and development workers in general. Considering the expectations that accompany investment projects, these actors can recycle their skills and networks. These dynamics may explain why certain localities have a better power of attraction and benefit from an accumulation of projects with varying objectives while others entire areas are void of outside operators.

In the same vein, mayors act as brokers. As they were brokers of development projects, trying to attract, control and redistribute 'development revenue' (Birshenk et al., 2000; Moose, 2005), they become brokers of international private investment project, trying to drain and valorize 'private investment revenue'. The multiplication of projects, like the seminal case of the Malagasy commune of Ankilivalo (Bidoux et al., 2008), seems to have replicated in areas coveted by private investors. One mayor explained that "his" commune had already hosted three private agricultural investment companies, that he had met with two further investors also wanting to valorize the local land and that, through these projects, he had weaved contacts with charities which had already promised to bring help.

Mayors mediate between the investor's team and the local society. Indeed, they are not only the authority from which developers seek agreement, they are also the ones in charge of leading the consultation with the grass-root administration level (*fokontany*) and with the population in general (*fokonolona*). Mastering the code and the language of both spheres, they adapt their language and their arguments to meet respectively the developers' and the local people's expectations. To legitimate their position, they claim a genuine will to enhance the well-being of the local society as a whole, even if, in practice, they support some interests more than others.

Different examples show how mayors try to cope with the conflicts of interests that may emerge from the investor's ambitions. Some mayors find trade-offs and arrangements between investors and different interest groups (cf. supra). They show a capacity for integrating the different needs of each group. To agricultural farmers, the investment project is presented as a strong means to secure their crops from cattle. To cattle herders, they stress the fact that they have obtained a commitment to furnish fodder, alternative pastures or shell from the investors. To landowners, they convince them of the benefits of having someone else pay for the land fees, as a means of securing their own land rights in the long term. Other mayors try to smother protests that have been voiced locally. They give assurances to the developers that the conflict is resolved and that farmers are very satisfied with offered paid work. They try to convince the farmers that the project represent good opportunities for the area and especially for them. But some of them do not manage to maintain their broker's position, facing the impossibility to couple their political mandate and their intermediate role. Sometimes trade-offs are indeed too difficult to reach notably when the private investment project awakens existing social and political tensions.

Offering – or promising to offer – financial and material resources, private investments can play a significant role in the « reshaping of the fields of power » already triggered by decentralization reforms and fostered by international aid projects (Birshenk et al., 2000). Since the regulatory framework does not establish a clear distribution of competencies between regional and local governments, the distribution of power depends very much on the undertaking and capacities of the people in charge. In this context, all new sizeable projects are likely, through developers' choices (interlocutors, priorities, investments zones etc...), to influence local power relations. On the basis of first case studies, mayors appear best positioned to welcome and negotiate with investors and, thereby, to use these investments as a way to secure greater autonomy from their hierarchical superiors. Thus private investment projects strengthen the power of local governments but, contrary to the international aid project (e.g. Birshenk et al., 2000), they do not systematically endow local association or supra local organizations with new resources and bargaining power. Acting as the main brokers, mayors do not necessarily improve communication between the developers and the local society. This factor contributes to explain the discrepancy between the potential risks

associated to large-scale land operations and the weak reactions to them (for a presentation of all other factors see Evers et al., forthcoming).

Conclusion

In line with the international institutions' recommendations (FAO, FIDA, UNCTAD, and the World Bank, 2010), new Malagasy land laws provide a framework to guarantee the respect of existing land rights. However, the land law is still recent and the large-scale acquisition processes are quite unusual. So far, only one-fifth of local governments do have a land registry office. Those have delivered 60 000 certificates but most local land rights are still not legally formalised. Lots of local elected and state representatives are not aware of the arrangements of these new laws. Above all, there is a need to take the 'social working of law' into account (Griffiths, 1992). Stakeholders interpret and react to laws in different ways. Thus, technical difficulties due to large land areas, deterioration of land tenure and topographical records, insufficient knowledge or wilful ignorance of the new land laws, corrupt practices, or wish to see the project succeed explain the tension between the legislation and its effective enforcement.

The legal recognition of local land rights is necessary but not sufficient to effectively protect them (Vermeulen & Cotula, 2010). Even if few developers have started engaging in legal procedure to access land, first field observations underline that practices or interpretation of the law often ignore or bypass official legal channels. Following, on the area targeted by the investors, land rights whether secured or not by certificate or even title deed, are partly not respected. In an unexpected way, local and informal land contracts between investors and mayors seem – at least in an initial stage – to leave more opportunities for the local groups to voice their claim.

This emphasizes that the linchpin to guaranty local rights is to reinforce and expand the network of local land registry offices but also to open a real debate and increase local communities' negotiation power with investors (Cotula *et al.,* 2010). For the time being, the developers' main interlocutors are the mayors of the local government. In a context where state subsidies are scarce, private agribusiness projects are welcomed just like international development projects would. This is all the more important since these private investment projects take on the international aid projects' characteristics. There therefore is an important need to ensure better information on the projects and their diverse stakes. There is also a crucial need to assess local land tenure and land use which is made by the different stakeholders: the investors, the local elected and state representative, the diverse local groups and experts. In Madagascar, land issues are indeed so sensitive and complex that some investors have already expressed their will to participate in such assessment exercises. First research program and studies have started in Madagascar with the support of investors, international nongovernmental organisations, the network of civil society organisations working on land issues, international funders, research institutes and the Malagasy land observatory. The challenge remains to associate the state representatives and to make this type of partnership and assessment systematic, or more simply, to reinforce the existing environmental impact assessment.

References

Andrianirina Ratsialonana, R., Ramarojohn, L., Burnod, P. and Teyssier, A. (2011) 'After Daewoo ? Current Status and Perspective of Large-Land Scale Acquisitions in Madagascar, Rome: Observatoire du Foncier à Madagascar, CIRAD, ILC.

Aubert, S., Karpe, P., Razafiarison, S., Ralambomanana K., Ranaivoson, A.T., Delcourt C., Rakotonandrasana T., Fabre C., Bertrand, A. (2008) 'Pluralisme juridique et sécurisation foncière dans une commune cadastrée : le cas de Miadanadriana. », in : Population rurale et enjeux fonciers à Madagascar, Sandron S., Antananarivo-Paris : 195-209.

Benda-Beckman, K. von (1981) 'Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village', Journal of Legal Pluralism, 19: 117-59.

Bidou JE., Droy I., Fauroux E. 2008. 'Communes et régions à Madagascar. De nouveaux acteurs dans la gestion locale de l'environnement', Mondes en développement, Vol 36 n°141.

Bierschenk, T., Olivier de Sardan, J. P., Chauveau J. P. (2000) 'Courtiers en développement: Les villages africains en quête de projets', Paris: Karthala.

Blundo, G., Mongbo, R., 1998, 'Décentralisation, pouvoirs sociaux et réseaux sociaux', Bulletin de l'APAD, numéro 16.

Blundo, G., Olivier de Sardan, JP. (2001) 'La corruption quotidienne en Afrique de l'Ouest', Politique Africaine, N°83, 8-37.

Borras, S., Franco, J. (2010) 'Towards a Broader View of the Politics of Global Land Grab: Rethinking Land Issues, Reframing Resistance', ICAS Working Papers Series, 1 (May 2010).

Blas J., (2008) 'Land leased to secure crops for South Korea', Financial Times, London, November 18.

Cotula, L., Vermeulen, S., Leonard R. and Keeley J. (2009) 'Land grab or development opportunity? Agricultural investment and international land deals in Africa', London/Rome : FAO, IIED and IFAD.

Evers, S.J.T.M., Burnod, P., Andrianirina Ratsialonana, R., Teyssier, A. (forthcoming) 'Foreign Land Acquisitions in Madagascar: Competing Jurisdictions of Access Claims'. In : New Topographies of Power? Africa Negotiating an Emerging Multi-polar World, Dietz et al, Uppsala: Brill AEGIS Book Series.

Pronk, C. and Evers, S. J. T. M. (2007) 'The Complexities of Land Access in Southeast Madagascar', Taloha, 18, 20 November 2007.

ECR (2008) 'Les données de référence sur les coûts et temps moyens requis pour l'exécution des procédures foncières', Antananarivo: Millennium Challenge Account.

FAO, FIDA, UNCTAD, and the World Bank (2010) 'Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resource', Extended Version, Discussion note (January 2010).

Ratrimoarivony, M., Gingembre, M., Bouhey A, Randrianarimanana, P. (2010) « L'affaire Daewoo à Madagascar », in Agricultures familiales et sociétés civiles face aux investissements massifs dans les terres. Six études de cas, Paris : Commission C2A (Agriculture et Alimentation), Coordination Sud.

Griffiths, J. (1992) 'Legal Pluralism and the Social Working of Law', in Coherence and Conflict in Law, Brouwer, B. et al. (eds.) Boston and Amsterdam: Kluwer and W.E.J. Tjeenk Willink Zwolle: 151-176.

Hirshman, A.O. (1970) ‘Exit, Voice and Loyalty. Responses to Decline in Firms, Organizations and states’. Cambridge MA : Harvard University Press.

Lavigne Delville Ph., Bouju J., LeRoy E. (2000) ‘Prendre en compte les enjeux fonciers dans une démarche d'aménagement. Stratégies foncières et bas-fonds au Sahel’, Paris : GRET, Coll. Etudes et Travaux.

Maldidier, C (1999) ‘Les causes de l’insécurité foncière à Madagascar. ‘, in : Communications présentées à l’atelier sur le foncier à Madagascar, 8 et 9 avril 1999, Ambohimanambola, Ministère de l’aménagement de la ville et des territoires de la ville et al., Antananarivo : MAEP, 52 -57.

Ministère de l’Agriculture, de l’Elevage et de la Pêche (2005) ‘Recensement de l’Agriculture (RA) 2004-2005’, MAEP/DSI, Madagascar.

Pèlerin M., (2009) ‘Madagascar: un conflit d'entrepreneurs. Figures de la réussite économique et rivalités politiques’, Politique africaine n°113, 152-165.

Raison, J.P. (1984). ‘Les Hautes Terres de Madagascar et leurs confins occidentaux’, Paris : Karthala.

Rakoto, H. (1995). Chair de la terre, oeil de l'eau... Paysanneries et recompositions de campagnes en Imerina (Madagascar), Orstom éditions.

Rakotondrainibe, M. and Randrianarimanana, P. (2010) ‘La résistance à l’accaparement des terres à Madagascar. Le cas de Daewoo’, in Agricultures familiales et sociétés civiles face aux investissements dans les terres dans les pays du sud, Allerdian C., Paris: Coordination Sud, 67-81.

Ratsimbarison. (1999) ‘La tenure foncière et la politique de développement intégré ‘In, Communications présentées à l’atelier sur le foncier à Madagascar, 8 et 9 avril 1999, Ambohimanambola, Ministère de l’aménagement de la ville et des territoires de la ville et al., Antananarivo : MAEP, 52-57.

Teyssier, A., Ramarojohn, L. and Andrianirina Ratsialonana, R. (2010) ‘Des terres pour l’agro-industrie internationale? Un dilemme pour la politique foncière malgache’, Echogéo, 11 December 2009/ February 2010.

Teyssier A., Andrianiriana-Ratsialonana R., Razafindralambo, R. and Razafindrakoto, Y. (2009) ‘Décentralisation de la gestion des terres à Madagascar: processus, enjeux et perspectives d’une nouvelle politique foncière’, In : Les politiques de reconnaissance des droits fonciers. Du cadre légal aux pratiques locales, Colin J.-P. et al., Paris : IRD Karthala, 273-297.

Tsitohae, R., Montagne, P.(2008) « le foncier forestier : réserve de terres agricoles ou véritable espace à gérer ? » In : Population rurale et enjeux fonciers à Madagascar, Sandron S., Antananarivo-Paris, 103-123.

Vermeulen, S. and Cotula, L. (2010) ‘Over the heads of local people: consultation, consent, and recompense in large-scale land deals for biofuels projects in Africa’, Journal of Peasant Studies, 37(4): 899 — 916.

World Bank (2010) Rising Global Interest in Farmland: Can it Yield Equitable and Sustainable Benefits?, Washington: World Bank.